



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2020-0562; FRL-8855-01-R1]

Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan Requirements for the 2015 Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This proposed action includes all elements of these infrastructure requirements except for portions of the “Good Neighbor” or “transport” provisions, which will be addressed in a future action. The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2020-0562 at <https://www.regulations.gov>, or via email to simcox.alison@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose.

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).¹ Section 110(a)(1) of the CAA requires states to submit, within 3 years after

¹ National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).² On September 23, 2020, the Rhode Island Department of Environmental Services (RI DEM) submitted a revision to its State Implementation Plan (SIP).³ The SIP revision addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS.

A. What is the scope of this rulemaking?

EPA is proposing to approve a SIP revision submitted by Rhode Island on September 23, 2020, addressing the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS, except for portions of the transport provisions, which will be addressed in a separate action.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make “infrastructure SIP submissions” to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁴ Unless otherwise

² SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs, and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

³On October 15, 2020 RI DEM submitted a letter that clarified that the state had replaced the word “Proposed” in Appendix A (“Good Neighbor SIP”) with the word “Final.” Note that today’s proposed action does not include this “Good Neighbor” (i.e., transport) SIP, which will be addressed in a future action. The October 2020 clarification letter is included in the docket for today’s action

⁴ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available in the docket for today’s action), as well as in numerous agency actions, including EPA’s prior action on Rhode Island’s infrastructure SIP to address the 2008 Ozone NAAQS. *See* 81 FR 10168 (February 29, 2016).

noted below, we are following that approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁵ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

B. What guidance did EPA use to evaluate Rhode Island's infrastructure SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" (2007 memorandum).⁶ EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)" (2013 memorandum).

II. EPA's evaluation of Rhode Island's Infrastructure SIP for the 2015 ozone standard.

Rhode Island's September 23, 2020, submission includes a detailed list of Rhode Island Laws and SIP-approved Air Quality Regulations that show how each component of its EPA-approved SIP meets the requirements of section 110(a)(2) of the CAA for the 2015 ozone NAAQS. The following review evaluates the state's submission in light of section 110(a)(2) requirements and relevant EPA guidance. For Rhode Island's September 2020 infrastructure

⁵ See *Montana Envtl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

⁶ All referenced memoranda are included in the docket for today's action.

submission, we provide an evaluation of the applicable section 110(a)(2) elements, excluding the transport provisions.

A. Section 110(a)(2)(A)–Emission limits and other control measures.

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.⁷ In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state’s SIP has basic structural provisions for the implementation of the NAAQS.

In its September 2020 submittal for the 2015 ozone NAAQS, Rhode Island cites a number of state laws and regulations in satisfaction of element A. Rhode Island DEM statutory authority with respect to air quality is set out in RIGL section 23-23-5(12), Powers and duties of the director, authorizes the RI DEM Director “[t]o make, issue, and amend rules and regulations ... for the prevention, control, abatement, and limitation of air pollution. ...” In addition, this section authorizes the Director to “prohibit emissions, discharges and/or releases and ... require specific control technology.” EPA previously approved RIGL section 23-23-5 into the Rhode Island SIP on April 20, 2016 (81 FR 23175).

For Element A, Rhode Island cites over 20 state regulations that it has adopted to control emissions related to ozone and the ozone precursors, nitrogen oxides (NO_x) and volatile organic compounds (VOCs). Some of these, with their EPA approval citation⁸ are listed here: No. 9 Air Pollution Control Permits (except for sections 9.13, 9.14, 9.15 and Appendix A, which have not been submitted) (84 FR 52364; October 2, 2019) ; No. 11 Petroleum Liquids Marketing and

⁷ See, for example, EPA’s final rule on “National Ambient Air Quality Standards for Lead,” 73 FR 66964, 67034 (November 12, 2008).

⁸ The citations reference the most recent EPA approval of the stated rule or of revisions to the rule.

Storage (85 FR 54924; September 3, 2020); No. 27 Control of Nitrogen Oxide Emissions (85 FR 54924; September 3, 2020); No. 37 Rhode Island's Low Emissions Vehicle Program (80 FR 50203; August 19, 2015); and No. 45 Rhode Island Diesel Engine Anti-Idling Program (73 FR 16203; March 27, 2008).

EPA proposes that Rhode Island meets the infrastructure requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. Section 110(a)(2)(B)–Ambient air quality monitoring/data system.

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and to make these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Section VI of the 1972 RI SIP specifies requirements for operation of the Air Quality monitoring network that RI DEM operates. EPA approved the state's 2020 Annual Air Monitoring Network Plan and 5-Year Network Assessment on August 4, 2020.⁹ Furthermore, RI DEM populates AQS with air quality monitoring data in a timely manner and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

⁹ EPA's approval letter is included in the docket for this action.

C. Section 110(a)(2)(C)–Program for enforcement of control measures and for construction or modification of stationary sources.

States are required to include a program providing for enforcement of all SIP measures and for the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160-169B) addresses PSD, while part D of the CAA (sections 171-193) addresses NNSR requirements.

The evaluation of each state’s submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

Rhode Island’s authority for enforcing SIP measures is established in RIGL section 23-23-5, which grants the Director of RI DEM general enforcement power, inspection and investigative authority, and the power to issue administrative orders, among other things. RIGL section 23-23-5 was approved by EPA on April 20, 2016 (81 FR 23175). In addition, RI APCR No. 9, “Air Pollution Control Permits,” sets forth requirements for new and modified major and minor stationary sources. APCR No. 9 includes, among other sections, sections that contain specific requirements for new and modified minor sources, specific new source review requirements applicable to major stationary sources or major modifications located in nonattainment areas, and specific new source review requirements applicable to major stationary sources or major modifications located in attainment or unclassifiable areas.

RSA Chapter 125-C:15, Enforcement, authorizes RI DEM to issue a notice of violation or an order of abatement, including a schedule for compliance, upon finding that a violation of Chapter 125-C, Air Pollution Control, has occurred. Additionally, RSA 125-C:15 I-b, II, III, and IV provide for penalties for violations of Chapter 125-C.

EPA proposes that Rhode Island meets the enforcement of SIP measure requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications.

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or is unclassifiable with regard to, the relevant NAAQS. EPA interprets the CAA as requiring each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants.

The State of Rhode Island's PSD permitting program is established in Title 250—Rhode Island Department of Environmental Management, Chapter 120—Air Resources, Subchapter 05—Air Pollution Control, Part 9—Air Pollution Control Permits (Part 9) and contains provisions that address applicable requirements for all regulated NSR pollutants, including Greenhouse Gases (GHGs). Revisions to the PSD program were last approved into the Rhode Island SIP on October 2, 2019 (84 FR 52364).

In determining whether a state has a comprehensive PSD permit program, EPA reviews the SIP to ensure that the air agency has a PSD permitting program meeting the current requirements for all regulated NSR pollutants, including the following EPA rules: “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as they Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” (the “2008 NSR Rule”), 73 FR 28321 (May 16, 2008); and “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers

(PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (the “2010 NSR Rule”), 75 FR 64864 (October 20, 2010).

EPA has previously determined that Rhode Island has a PSD permitting program meeting the requirements of these three rules. In our proposal on February 29, 2016, regarding Rhode Island’s infrastructure SIP submittals for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) standards, we explained how the state’s infrastructure SIPs met the requirements of the 2008 NSR Rule and most of the requirements of the Phase 2 Rule. See proposed rule at 81 FR 10168 and final rule at 81 FR 23175 (April 20, 2016).

In our proposal on July 24, 2019, approving a subsequent Rhode Island submittal of revisions to its PSD permit program regulations, we explained how Rhode Island satisfied the requirements of the 2010 NSR Rule and the remaining requirements of the Phase 2 Rule. See proposed rule at 84 FR 35582 (July 24, 2019) and final rule at 84 FR 52364 (October 2, 2019).

Based on our rationale contained in the February 2016 and July 2019 notices collectively explaining how Rhode Island’s PSD permitting program satisfies the requirements the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule, we propose to approve Rhode Island’s September 2020 infrastructure SIP submittal for this PSD sub-element of section 110(a)(2)(C) for the 2015 ozone NAAQS.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants.

EPA last approved revisions to Rhode Island's minor NSR program (APCR No. 9) on October 2, 2019 (84 FR 5234). Rhode Island and EPA rely on the state's minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS, including the 2015 ozone standard. Therefore, we propose that Rhode Island meets this sub-element requirement for a SIP-approved minor NSR permit program for the 2015 ozone NAAQS.

D. Section 110(a)(2)(D)–Interstate transport.

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D), also known as the “good neighbor” provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states and countries due to the transport of air pollution.

In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. EPA commonly refers to these requirements of section 110(a)(2)(D) as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance). A state's SIP submission for Prongs 1 and 2 is also referred to as a state's “Transport SIP.” Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures included in the applicable implementation plan for any other state under part C of the Act to prevent significant deterioration of air quality and to protect visibility. EPA commonly refers to these requirements as Prong 3 (Prevention of Significant Deterioration or PSD) and Prong 4 (Visibility Protection).

In today's action, EPA is not evaluating Rhode Island's Transport SIP (i.e., Prongs 1 and 2; combined as (D)1 in Table 1 below) or Prong 4 ((D)3 in Table 1). EPA will address Rhode Island's Transport SIP and Prong 4 for the 2015 ozone NAAQS in separate actions. Today's

action, however, does address Prong 3 (PSD) as well as section 110(a)(2)(D)(ii) of the Act, which requires SIPs to contain provisions to ensure compliance with sections 126 and 115 of the Act relating to interstate and international pollution abatement, respectively.

Section 110(a)(2)(D)(i)(II)–PSD (prong 3).

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state’s SIP under Part C of the CAA. As explained in the 2013 memorandum,¹⁰ a state may meet this requirement with respect to in-state sources and pollutants that are subject to PSD permitting through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA’s PSD implementation rules. Rhode Island has a comprehensive PSD permitting program in place that satisfies requirements for all regulated NSR pollutants, as explained above in section 110(a)(2)(C).

For in-state sources not subject to PSD, this requirement can be satisfied through an approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA approved Rhode Island's latest NNSR regulation (APCR No. 9) on October 2, 2019 (84 FR 52364). This regulation contains provisions for how the state must treat and control sources in nonattainment areas consistent with 40 CFR 51.165, or appendix S to 40 CFR 51.

Therefore, EPA is proposing that Rhode Island meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(i)(II) related to PSD (Prong 3) for the 2015 ozone NAAQS.

Section 110(a)(2)(D)(ii)–Interstate Pollution Abatement.

¹⁰ Included in the docket for today’s action.

This sub-element requires that each SIP contain provisions requiring compliance with requirements of CAA section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

EPA last approved revisions to Rhode Island's PSD program on October 2, 2019 (84 FR 52364). This program includes a provision requiring Rhode Island to notify neighboring states of RI DEM's intention to issue a draft PSD permit or to deny a permit application. *See* APCR No. 9, section 9.16(C)(5).

These public-notice requirements are consistent with the Federal SIP-approved PSD program's public-notice requirements for affected states under 40 CFR 51.166(q). Therefore, we propose to approve Rhode Island's compliance with the infrastructure SIP requirements of CAA section 126(a) for the 2015 ozone NAAQS. Rhode Island has no obligations under any other provision of CAA section 126, and no source or sources within the state are the subject of an active finding under section 126 with respect to the 2015 ozone NAAQS.

Section 110(a)(2)(D)(ii)–International Pollution Abatement.

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of CAA section 115 relating to international pollution abatement.

Section 115 authorizes the Administrator to require a state to revise its SIP to alleviate international transport into another country where the Administrator has made a finding with respect to emissions of a NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against Rhode Island with respect to the 2015 ozone NAAQS.

Therefore, EPA is proposing that Rhode Island meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to CAA section 115 for the 2015 ozone NAAQS.

E. Section 110(a)(2)(E)–Adequate resources.

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the state will have adequate personnel, funding, and legal authority under state law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements for state boards in CAA section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Rhode Island does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law to Carry Out its SIP, and Related Issues.

Rhode Island's infrastructure SIP submittal for the 2015 ozone NAAQS states that its air agency has authority and resources to carry out its SIP obligations. Rhode Island cites RIGL Section 23-23-5, which provides the RI DEM with the legal authority to enforce air pollution control requirements. Additionally, this statute provides the DEM with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. EPA approved RIGL section 23-23-5 into the Rhode Island SIP on April 20, 2016 (81 FR 23175).

Rhode Island's Office of Air Resources (RIOAR) has had a staff of 25 for fiscal years (FYs) 2019 through 2021. During this period, its budget has increased from about \$2.9 million to \$3.0 million. OAR's air laboratory is housed in the Department of Health (RIDOH) and, from FY 2019 through 2021, has had a staff of 7 and budget of just under \$1 million.¹¹ RI DEM staff and

¹¹ Budget spreadsheet provided to EPA from Rhode Island is included in the docket for this action.

operations are funded by the State and through EPA grants, including annual funding through CAA sections 103 and 105 to assist with the costs of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. Rhode Island also has an EPA-approved fee program (APCR No. 28, Operating Permit Fees), which is used to support CAA title V program elements such as permitting, monitoring, testing, inspections, and enforcement. Furthermore, as noted above, RI DEM's budget has been consistent over the past number of years and over these years Rhode Island has been able to meet its statutory commitments under the Act. Based upon Rhode Island's submittal and the additional budget information, EPA proposes that Rhode Island meets the infrastructure SIP requirements of this sub-element of section 110(a)(2)(E) for the 2015 ozone NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA.

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128(a) of the CAA. That provision contains two explicit requirements: (1) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. Section 128 further provides that a state may adopt more stringent conflicts of interest requirements and requires EPA to approve any such requirements submitted as part of a SIP.

In Rhode Island, no board or body approves permits or enforcement orders; these are approved by the Director of RI DEM. Thus, with respect to this sub-element, Rhode Island is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest).

On April 20, 2016, EPA approved Rhode Island Code of Ethics, RIGL sections 36-14-1 through 36-14-7 (81 FR 23175). These sections apply to state employees and public officials and requires disclosure of potential conflicts of interest and provides that “No person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities.”

EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(E)(ii) for the 2015 ozone NAAQS.

F. Section 110(a)(2)(F)–Stationary source monitoring system.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Rhode Island’s infrastructure submittal references existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports and that provide for the correlation of emissions data with emission limitations and for the public availability of emission data. For example, Rhode Island’s submittal references RIGL § 23–23–5(16), which authorizes RI DEM to require a source to install, maintain, and use air pollution emission monitoring devices and to submit periodic reports on the nature and amounts of emissions. In addition, under RIGL § 23–23–13 and the Rhode Island public records act, *see* RIGL Title 38,

emissions data are made available to the public and are not protected as “trade secret or proprietary information.” With respect to state regulations, APCR No. 9, “Air Pollution Control Permits,” requires emissions testing of permitted processes within 180 days of full operation and specifies that preconstruction permits issued contain an emissions testing section. In addition, APCR No. 6, “Continuous Emission Monitors,” requires certain sources to install, calibrate, operate, and maintain a continuous emission monitoring system and to report certain emissions-related data to RI DEM. APCR No. 27, “Control of Nitrogen Oxide Emissions,” listed in Element A, also requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors. Finally, APCR No. 14, “Record Keeping and Reporting,” requires emission sources to report emissions and other data to RI DEM annually, and provides that information in certain reports obtained pursuant to APCR No. 14 “will be correlated with applicable emission and other limitations and will be available for public inspection.”

Consequently, EPA proposes to approve Rhode Island’s SIP as providing for public availability of emission data and as well as authority to release emission data to the public. Therefore, EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(F) for the 2015 ozone NAAQS.

G. Section 110(a)(2)(G)–Emergency powers.

This section requires that a plan provide for state authority comparable to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” Section 303 further authorizes the Administrator to issue “such orders as may be necessary to protect public health or welfare or the environment” in the event that “it is not practicable to assure prompt protection ... by commencement of such civil action.”

We propose to find that a combination of state statutes and regulations discussed in the Rhode Island’s September 2020 infrastructure submittal provides for authority comparable to that given the Administrator in CAA section 303. The statutes and regulations are: RIGL §§ 10–20, 23–23.1–6, 23–23.1–5, 23–23.1–7, 23–23.1–8, 42–17.1–2, and APCR No. 7. In our proposal to approve this requirement for Rhode Island’s infrastructure SIP submissions for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, we explained how this combination of authorities provides Rhode Island with authority comparable to that in CAA § 303. *See* 81 FR 10168, 10177 (February 29, 2016). These statutes and the regulation apply in the same manner to ozone precursor emissions as they do to emissions of the other NAAQS pollutants. Accordingly, for the reasons contained in our proposal to approve this element for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ infrastructure SIPs, we propose to find that this combination of state statutes and regulations provide for authority comparable to that in CAA § 303 for the 2015 ozone infrastructure SIP.

Section 110(a)(2)(G) also requires that, for any NAAQS, Rhode Island have an approved contingency plan (also known as an emergency episode plan) for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (“Prevention of Air Pollution Emergency Episodes”) for the relevant NAAQS. A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* There is only one AQCR in Rhode Island—the Metropolitan Providence Interstate AQCR—and Rhode Island's portion thereof is classified as a Priority I area for ozone. *See* 40 CFR 52.2071. Consequently, as relevant to this proposed rulemaking action, Rhode Island's SIP must contain a contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to ozone. Rhode Island's submittals cite APCR No. 10, “Air Pollution Episodes,” which specifies episode criteria for, and measures to be implemented during, air pollution alerts, warnings and emergencies to prevent

ambient pollution concentrations from reaching significant harm levels and is very closely modeled on EPA's example regulations for contingency plans at 40 CFR part 51, appendix L.

As stated in Rhode Island's infrastructure SIP submittals under the discussion of public notification (Element J), Rhode Island also posts near real-time air quality data, air quality predictions and a record of historical data on the RI DEM website. Alerts are sent by email to many affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions that reduce emissions.

In addition, daily forecasted ozone and fine particle levels are also made available on the internet through the EPA AirNow and EnviroFlash systems. Information regarding these two systems is available on EPA's Web site at www.airnow.gov. Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current 8-hour ozone (or 24-hour PM_{2.5}) standard.

These Rhode Island statutes, rules and regulations are consistent with the requirements of 40 CFR part 51, subpart H, section 51.150 through 51.153. EPA proposes that Rhode Island meets the applicable infrastructure SIP requirements for section 110(a)(2)(G), including contingency plan requirements, for the 2015 ozone NAAQS.

H. Section 110(a)(2)(H)–Future SIP revisions.

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever EPA finds that the SIP is substantially inadequate.

In 1973, it was determined that Rhode Island's original SIP did not fully satisfy section 110(a)(2)(H), and EPA promulgated federal regulations to address the gap in the SIP. *See* 40 CFR 52.2080. Since Rhode Island's September 23, 2020, submittal likewise does not address the gap in the SIP that led to a disapproval in 1973, EPA proposes to find that Rhode Island has not

met applicable infrastructure SIP requirements for element H with respect to the 2015 ozone NAAQS. Accordingly, EPA proposes to disapprove this portion of the state's submittal. No further action by EPA or the state is required, however, because remedying federal regulations are already in place. Moreover, mandatory sanctions under CAA section 179 do not apply because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

I. Section 110(a)(2)(I)-Nonattainment area plan or plan revisions under part D.

Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)-Consultation with government officials; public notifications; prevention of significant deterioration; visibility protection.

Section 110(a)(2)(J) of the CAA requires that each SIP “meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).” The evaluation of the submission from Rhode Island with respect to these requirements is described below.

Sub-Element 1: Consultation with Government Officials.

Pursuant to CAA section 121, a state must provide a satisfactory process for consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements. RIGL section 23-23-5, which was approved by EPA on April 20, 2016 (81 FR 23175), authorizes the RI DEM Director “[t]o advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, and other states and interstate agencies, and with effective groups in industries in furthering the purposes of this chapter.” In addition, APCR No. 9, Air Pollution Control Permits, which was approved into the Rhode Island SIP on October 24, 2013 (78 FR 63383), with the latest revisions approved on October 2, 2019 (84 FR 52366), directs RI DEM to notify relevant municipal officials and FLMs, among others, of tentative determinations by RI DEM with respect to permit applications for major stationary sources and major modifications. EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 2: Public Notification.

Pursuant to CAA section 127, states must notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Rhode Island's APCR No. 10, Air Pollution Episodes, specifies criteria for, and measures to be implemented during, air pollution alerts, warnings and episodes. The RI DEM website includes near real-time air quality data, air quality predictions, and a record of historical data. Alerts are sent by email to many affected parties – emissions sources, concerned individuals, schools, health and environmental agencies and the media – and include information about the health implications of elevated pollutant levels and list actions that reduce emissions. In addition, Air Quality Data Summaries of the year's air quality monitoring results are issued annually. The

summaries are sent to a mailing list of interested parties and posted on the RI DEM website. Rhode Island is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

Sub-Element 3: PSD.

EPA discussed Rhode Island's PSD program in the context of infrastructure SIPs in the above paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and determined that the state satisfies the requirements of EPA's PSD implementation rules. Thus, EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 4: Visibility Protection.

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2015 ozone NAAQS. Therefore, we are not proposing action on this sub-element.

K. Section 110(a)(2)(K)—Air quality modeling/data.

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect

on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA also recommends in the 2013 memorandum that, to meet section 110(a)(2)(K), a state submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request.

Rhode Island reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, “Guideline on Air Quality Models” (EPA Guideline). Rhode Island APCR No. 9, “Air Pollution Control Permits,” requires permit applicants to submit air-quality modeling based on applicable air quality models, data bases, and other requirements specified in the EPA Guideline to demonstrate impacts of new and modified major sources on ambient air quality. Rhode Island APCR No. 9 also specifies that the EPA must receive notice of the public-comment period that is mandated before a major source permit is issued. Modeling data are sent to EPA along with the draft major permit. The state also collaborates with the Ozone Transport Commission (OTC), and the Mid-Atlantic Regional Air Management Association (MARAMA) and EPA in performing any necessary large-scale urban airshed modeling for ozone (and PM).

EPA proposes that Rhode Island meets the requirements of section 110(a)(2)(K) for the 2015 ozone NAAQS.

L. Section 110(a)(2)(L)–Permitting fees.

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit.

Section 23-23-5 of the RIGL, which was approved by EPA on April 20, 2016 (81 FR 23175), provides for the assessment of operating permit fees and preconstruction permit fees for air emissions sources. In addition, RI DEM's “Rules and Regulations Governing the Establishment

of Various Fees” sets forth permit fee requirements for air emissions sources and the legal authority to collect those fees. These rules and regulations are promulgated pursuant to RIGL Chapter 23-23, Rhode Island’s “Clean Air Act,” and Chapter 42-35, Administrative Procedures.

Rhode Island's infrastructure SIP submittals also refer to its regulations implementing its operating permit program pursuant to 40 CFR part 70. Rhode Island's Title V permitting program, APCR No. 28, Operating Permit Fees, requires major sources to pay annual operating permit fees. EPA's approval of Rhode Island's title V program (APCR No. 28) became effective on November 30, 2001. *See* 66 FR 49839 (Oct. 1, 2001). To gain this approval, Rhode Island demonstrated the ability to collect sufficient fees to run the program. The fees collected from title V sources are above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i).

EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone NAAQS.

M. Section 110(a)(2)(M)–Consultation/participation by affected local entities.

To satisfy Element M, states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Rhode Island's infrastructure submittal references RIGL § 23-23-5, which was approved by EPA on April 20, 2016 (81 FR 23175). This state law provides for consultation with affected local political subdivisions and authorizes the RI DEM Director “to advise, consult, and cooperate with the cities and towns and other agencies of the state . . . and other states and interstate agencies . . . in furthering the purposes of” the state’s “Clean Air Act” (*i.e.*, RIGL chapter 23-23).

EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(M) for the 2015 ozone NAAQS.

III. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by Rhode Island on September 23, 2020, for the 2015 ozone NAAQS. Today's action does not include the "good neighbor" provisions (i.e., section 110(a)(2)(D)(i)), also known as a state's Transport SIP, nor does it include section 110(a)(2)(D)(i)(II) as it relates to visibility protection (Prong 4). Rhode Island's Transport SIP and Prong 4 for the 2015 ozone NAAQS will be addressed in future actions.

EPA's proposed action regarding each infrastructure SIP requirement for the 2015 ozone NAAQS is contained in Table 1 below.

Table 1: Proposed action on Rhode Island's infrastructure SIP submittal for the 2015 ozone NAAQS

Element	2015 ozone NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	A
(C)3: Program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	No action
(D)2: PSD	A
(D)3: Visibility Protection	No action
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	D
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A

(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve
+	Not germane to infrastructure SIPs
No action	EPA is taking no action on this infrastructure requirement.
NA	Not applicable
D	Disapprove, but no further action required because federal regulations already in place

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this *Federal Register*.

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 11, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

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